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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/775,407      | 02/10/2004  | John Kapusta         | 5001-0441-1         | 8895             |

7590 03/02/2005

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| EXAMINER |
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JOHNSON, STEPHEN

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| ART UNIT | PAPER NUMBER |
|----------|--------------|

3641

DATE MAILED: 03/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/775,407

Applicant(s)

KAPUSTA, JOHN

Examiner

Stephen M. Johnson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 December 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-11 and 13-20 is/are rejected.
- 7) ☒ Claim(s) 3 and 12 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>8/9/2004</u> . | 6) <input type="checkbox"/> Other: _____  |

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1. Applicant's election with traverse on the grounds that different species do not exist in the reply filed on 12/08/2004 is acknowledged. The traversal is on the ground(s) that the different figures do not in fact constitute different species. This is found persuasive and an action on all claims follows.

2. The drawings are objected to because the lead line 216 is directed to the inner wall of the magazine and not the outer wall. As such it does not define the plane of the magazine wall (see para. [0045]). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

3. Claims 7 and 16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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In claims 7 and 16, the phrase “said restraining catch” lacks an antecedent.

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-2, 4-5, 7, 9-11, 13-14, 16, and 18-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Oliver.

Oliver discloses a firearm comprising:

- |  |                 |
|--|-----------------|
| a) a slide;  | 17              |
| b) a magazine;   | 14              |
| c) a magazine follower ;   | 37              |
| d) a protruding lip;   | 37 (far right)  |
| e) a distal end of the protruding lip extending beyond<br>a plane defined by the outer wall; | 37 (see fig. 5) |
| f) a biasing member;   | 37 (far left)   |
| g) a slide lever including biasing arm; and  | 34, 35          |
| h) a magazine spring.  | 15              |

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for

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purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1-2, 8, 10-11, and 17-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Beary.

Beary discloses a firearm comprising:

- |  |                    |
|--|--------------------|
| a) a slide;  | 50                 |
| b) a magazine;   | 14, 15             |
| c) a magazine follower ;   | 32, 72, 66         |
| d) a protruding lip;   | 32                 |
| e) a distal end of the protruding lip extending beyond<br>a plane defined by the outer wall; | 32 (see fig. 8)    |
| f) a biasing member;   | 40, 42             |
| g) a magazine spring;  | 30                 |
| h) a cutout; and   | in 15 (see fig. 9) |
| i) a follower body.  | 66                 |

8. Claims 1-2, 4-11, and 13-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Savioli.

Savioli discloses a firearm comprising:

- |                          |                  |
|--------------------------|------------------|
| a) a slide;              | 20               |
| b) a magazine;           | 14               |
| c) a magazine follower ; | 56               |
| d) a protruding lip;     | 56 (upper right) |

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|  |                 |
|--|-----------------|
| e) a distal end of the protruding lip extending beyond<br>a plane defined by the outer wall; | 56 (see fig. 3) |
| f) a biasing member;   | magazine spring |
| g) a slide lever including biasing arm;  | 36, 40, 54      |
| h) a magazine spring;  | magazine spring |
| i) a restraining catch (pivots); and   | 40              |
| j) a slide recess.   | 21              |

9. Claims 1-2, 8, 10-11, 17, and 19-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Harvey.

Harvey discloses a firearm comprising:

|  |                   |
|--|-------------------|
| a) a slide;  | 55                |
| b) a magazine;   | 239               |
| c) a magazine follower ;   | 271               |
| d) a protruding lip;   | 273               |
| e) a distal end of the protruding lip extending beyond<br>a plane defined by the outer wall; | 273 (see fig. 16) |
| f) a biasing member;   | 271 (far right)   |
| g) a follower body; and  | 271 (bottom)      |
| h) a magazine spring.  | 272               |

10. Claims 3 and 12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

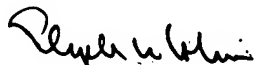
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11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen M. Johnson whose telephone number is 703-306-4158.

The examiner can normally be reached on Tuesday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on 703-306-4198. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9326 for regular communications and 703-872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-4177.



**STEPHEN M. JOHNSON**  
**PRIMARY EXAMINER**

Stephen M. Johnson  
Primary Examiner  
Art Unit 3641

SMJ

February 26, 2005